

(20,885.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 193.

PAUL A. WEEMS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

THE UNITED STATES, Plaintiff,
vs.
PAUL A. WEEMS, Defendant.

Complaint.

Falsification of a Public Document by a Public Official.

The undersigned accuses Paul A. Weems of the crime of falsification of a public document by a public official, committed as follows:

That on or about the 22nd day of June, 1904, in the City of Manila, Philippine Islands, the said Paul A. Weems, then and there, a public official of the United States Government of the Philippine Islands, to wit: a duly appointed qualified and acting Disbursing Officer of the Bureau of Coast Guard and Transportation of the United States Government of the Philippine Islands, did, then and there, wilfully, unlawfully, feloniously, and with deliberate pre-meditation, abuse of confidence and by taking advantage of his official position, aforesaid, corruptly and with the intent, then and there, to deceive and defraud the said United States Government of the Philippine Islands, and its officials, falsify a public and official document, namely, a cash book of the Captain of the Port of Manila, Philippine Islands, and the Bureau of Coast Guard and Transportation of the United States Government of the Philippine Islands, kept by the said Paul A. Weems, as Disbursing Officer of the said Bureau of Coast Guard and Transportation, as an official record and document of his office, aforesaid, and the office of the Captain of the Port of Manila, Philippine Islands, and the office of the Bureau of Coast Guard and Transportation of the United States Government of the Philippine Islands, for the purpose of recording and keeping a record therein of the receipts and disbursements in the

2 said Bureau of Coast Guard and Transportation, made by the said Paul A. Weems, as said Disbursing Officer; in this, that the said Paul A. Weems did, then and there, pervert the truth in the narration of the facts contained in said record, document and cash book, in that he did, then and there, insert and write in said document, record and cash book, on folio or page 190 thereof, and on the second blue line from the bottom of said page or folio, under date of June 22, 1904, in the column for voucher number, the figures "29," and in the column or blank space left to indicate and make a record of the person to whom money was paid by the said Paul A. Weems, as said Disbursing Officer, ditto marks below the words "pay roll" written on the 11th blue line from the bottom of said page, and in the column and blank space for recording for and

on what account money was paid out by the said Paul A. Weems, as said Disbursing Officer, the words "Capul, Apr. and May," and in the column and blank space prepared for the recording of the amounts paid by said Paul A. Weems, as said Disbursing Officer, on account of light house service, Bureau of Coast Guard and Transportation, the figures "204" in the dollars column, and the figures "00" in the cents column, and in the column of "Totals Disbursed" the figures "204" in the dollars column, and the figures "00" in the cents column; and on the first blue line from the bottom of the page in the column of voucher numbers, the figures "30," and in the column or blank space left to record to whom money was paid by the said Paul A. Weems, as said Disbursing Officer, ditto marks below the words "pay roll" written on the 11th blue line from the bottom of said page, and in the column and blank space for recording for what account money was paid out by the said Paul A. Weems, as said Disbursing Officer, the word "Malabriga" and ditto marks under the word "May" written on the 2nd blue line from the bottom of said page, and in the column and blank space prepared for the recording of the amounts paid out and disbursed by the said Paul A. Weems, as said Disbursing Officer, on account of light house service, Bureau of Coast Guard and Transportation, the figures "408" in the dollars column, and the figures "00" in the cents column, and in the column of "Totals Disbursed" the figures "408" in the dollars column, and the figures "00" in the cents column; thereby, and by such entries causing said document, record and cash book to state and show on its face that the said Paul A. Weems, as said Disbursing Officer, had on the 22nd day of June, 1904, paid out and disbursed on account of the Capul Light House Pay Roll, voucher No. 29 for the month of June, 1904, as wages of the employees of the light house service of the United States Government of the Philippine Islands, at the said Capul Light House, the sum of 204 Pesos, Philippine Currency, and on account of the Malabriga Light House pay roll, voucher No. 30 for the month of June, 1904, as wages of the employees in the light house service of the United States Government of the Philippine Islands, at said Malabriga Light House, the sum of 408 Pesos, Philippine Currency, when in truth and in fact the said Paul A. Weems had not, as said Disbursing Officer, nor in any other capacity, paid out nor disbursed, on said 22nd day of June, 1904, or on any other date, 204 Pesos, Philippine Currency, on voucher No. 29, nor 408 Pesos, Philippine Currency, on voucher No. 30, nor had he paid out the said sums or any part thereof on any account; except that he had paid out the sum of 204 Pesos, Philippine Currency, on account of voucher No. 30; all contrary to law.

(Sgd.)

A. M. EASTHAGEN.

Subscribed and sworn to before me and in my presence, in the City of Manila, Philippine Islands, this 23rd day of November, 1904, by the said A. M. Easthagen.

(Signed)

MANUEL ARAULLO,
Court of First Instance, Manila, P. I.

4 UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance for Manila.

Part I.

Criminal Cause, No. 1913.

THE UNITED STATES
versus
PAUL A. WEEMS.

There appearing a complaint filed by A. M. Easthagen against Paul A. Weems;

Considering the result of the investigation carried on in the presence and with the intervention of the Prosecuting Attorney of the City of Manila, and being satisfied that the crime of falsification of a public document by a public official as alleged in said complaint has been committed, and there being reasonable grounds to believe that it has been committed by the said accused;

It is hereby ordered that an order of arrest issue for the arrest and detention of Paul A. Weems, and that he be informed of the accusation.

Manila, November 29, 1904.

(Sgd.) MANUEL ARAULLO,
*Judge of the Court of First Instance
of the City of Manila, P. I., Part I.*

5 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

No. 1913.

THE UNITED STATES
versus
PAUL A. WEEMS.*Order of Arrest.*

To any Officer of the Law:

You are hereby ordered to arrest Paul A. Weems, who is said to be in Manila, and who has been accused before me of the crime of falsification of a public document by a public official, and bring him to my presence as soon as possible, in order to deal with him according to what the law orders.

Manila, November 29, 1904.

(Sgd.) MANUEL ARAULLO,
*Judge of the Court of First Instance
of the City of Manila, Part I.*

[SEAL OF COURT.]

6 UNITED STATES OF AMERICA,
Islas Filipinas:

In the Court of First Instance for the City of Manila.

No. 1913.

THE UNITED STATES, Plaintiff,
versus
PAUL A. WEEMS, Defendant.

Falsification of a Public Document by a Public Official.

Demurrer.

Comes now the defendant in the above entitled cause and demurs to the complaint for the following reasons:

1. That the facts charged in the complaint do not constitute a public offense.
2. That the complaint is vague, and it is impossible to deduce therefrom the facts upon which the accusation for the crime of falsification of a public document by a public official is based.
3. The complaint is not drawn up in such a way that a person of average intelligence could understand what is alleged therein.
4. It is impossible to understand the accusation from the vague narration in the complaint of the facts as to the entries and falsifications therein complained of.
5. A copy of the falsified documents has not been inserted in the complaint, nor has a copy of the same been attached thereto.

Manila, December 2, 1904.

(Sgd.)

W. A. KINKAID,
Attorney for Defendant.

Received copy, Dec. 2, 1904.

(Sgd.) CHAS. H. SMITH,
Prosecuting Attorney.

Filed on the 2d. day of December, 1904.

(Sgd.) C. A. SOBRAL,
Assistant Clerk Court First Instance, Manila, P. I.

8 UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance for Manila.

Part I.

Criminal Cause, No. 1913.

THE UNITED STATES
versus
PAUL A. WEEMS,

Falsification of a Public Document by a Public Official.

Order.

The demurrer interposed to the complaint by the counsel for the accused having been heard, and taking into account that the facts stated in the complaint, just as they appear to have been narrated in the same, do constitute an offense; that the complaint is not vague and that the same is drawn up in conformity with the substantial requisites prescribed by the law, and in such a way that a person of average intelligence could understand what is alleged therein; and lastly, that it was not necessary to insert in the same the whole document which is said to have been falsified, nor to attach thereto a copy of said document, the description and detailed outline which is made of the same and the narration of the fact which constituted the falsification at bar are sufficient, so that from all of it the representative of the accused can understand the same.

Said demurrer is overruled, and the defendant is ordered to plead to the complaint.

Manila, December 10, 1904.

(Sgd.)

MANUEL ARAULLO,
*Judge of the Court of First Instance
for Manila, P. I., Part I.*

9 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for Manila,

Part I.

Criminal Cause, No. 1913.

THE UNITED STATES
versus
PAUL A. WEEMS.

Falsification of a Public Document by a Public Official.

Sentence.

It was proved at the trial that Paul A. Weems being a public official or official paymaster, with the title of Disbursing Officer of the

Bureau of Coast Guard and Transportation of the Government of the United States in these Islands; having as such, and by reason of said position, a book known as a cashbook pertaining to the same Bureau, which Bureau was then a part of the Office of the Captain of the Port of Manila; and it being the duty of said accused to disburse and pay the salaries of the employees of the lighthouses of this Archipelago, and he having received from the Insular Treasury the funds necessary to make such payments, made an entry on page 190 of the said cashbook under date of June 22d, 1904, relating to the said payrolls, to the effect that he had paid the sum of 204 pesos on one hand and 408 on the other for the salaries of the employees of the lighthouses of Capul and Malabrido, respectively, for the month of April and May, which was not true, because certain employees of the lighthouses of Capul and Malabrido who should have participated in those sums, received their salaries some months afterward, or, that is, in the month of September of the same year, 1904.

It was proved therefore, that a false entry was made in the 10 said cashbook, because on the 22d of June, 1904, the payments due said employees had not been made, although they were made sometime thereafter, or in the month of September. The entries in those books relating to payrolls Nos. 29 and 30 were false in that it there appeared that these payments were made on June 22d, 1904.

Much has been contended during the trial by counsel for the accused and for the Government in their respective written and oral briefs, with respect to the weight that should be given to the facts proved at the trial. Of course, it is evident that there has been a falsification, that that falsification was committed in the entries made under date of June 22d, 1904, in the aforesaid cashbook, in reference to payments made in June 22d, 1904, in relation to the payrolls corresponding to Nos. 29 and 30 of the lighthouses at Capul and Malabrido. But in order to determine if that falsification falls within the provisions of Sec. 300 of the Penal Code, it is necessary to determine if the accused was a public official when he committed the act, if the document was a public or an official one and if the accused on executing or committing such act abused his official position.

Sec. 401 of the Penal Code says that for the purposes of Title III and of the preceding ones of Book II of the said Code, all those who by the immediate provisions of the law or by popular elections or appointment by competent authority take part in the exercise of public functions, shall be taken for public officials.

No evidence was introduced in the trial of the cause as to whether the accused was appointed by competent authority to the position of Disbursing Officer for the *the* aforesaid Bureau of the Government of the United States in these Islands but this proof was not 11 necessary for the prosecution to make, for, according to No.

13 of Sec. 334 of the Code of Civil Procedure, one of the presumptions *juris tant* is that a person who holds a public office has been duly appointed or elected. To take away that presumption

it would have been necessary for the defense to prove that Paul A. Weems had not been appointed by competent authority to the aforesaid position. But since that presumption above-mentioned exists and also the settled fact that said accused had taken charge of the Office of Disbursing Officer in said Bureau of the Government, it is evident that in accordance with the provisions of said Sec. 401,—perfectly applicable to the case at bar for the purposes of the aforesaid Sec. 300 of the Penal Code,—the accused Paul A. Weems should be taken for a public official. It is not necessary, therefore, to go into a discussion as to whether the accused was an executive, legislative or judicial official, for the reason that the express provisions of the Penal Code and the acts performed by said accused being decided upon, it is not to be doubted that he was a public official in the administrative department of the Government of the United States in these Islands.

Is the cashbook in which the false entries were made a public or official document? Undoubtedly it is. Let us apply Sec. 229 of the Code of Civil Procedure or Sec. 579 of the former Code of Civil Procedure (*Ley de Enjuiciamiento Civil*), which give the definition of solemn public documents or official documents, and we can do no less than admit that the aforesaid cashbook partakes of the character last described, or that of a public document.

Said book is a record of the acts performed within a public office, kept in the same by a public official; it is a document especially 12 destined for the making of official entries in the same, by which the Disbursing Officer must show how the sums in hands for distribution among the several divisions or lighthouses of the Bureau of Coast Guard and Transportation have been used. It is, furthermore, a document which is placed in charge of a public official on account of its nature, and under all these circumstances said book is an official document. It is also evident that the falsification was committed by the accused in abuse of his office for he was in charge of said book, the same having been entrusted to him, and he ought to have entered in the same with all faithfulness the payments made by him, and in stating in making false entries he undoubtedly abused his office.

The fact, therefore, proved at the trial constitutes the crime of falsification of public document by a public official, provided for and punished in Sec. 300 of the Penal Code.

It has been alleged, however, by the defense that no fraud had been committed in relation to the State, nor in relation to the employees to whom the salary appearing in those entries belonged, that there was no damage caused to one nor to the others and, therefore, the crime was not punishable.

In the case at bar no discussion is made about the falsification of a private document, in which it is necessary that the falsification should have been committed to the damage of a third party or with the intention of causing said damage. The Law does not require the concurrence of these circumstances to punish the crime of falsification of a public document, because it takes into consideration the essential difference which exists between these two classes of docu-

13 ments, the object for which they are drawn, and the effect of any alteration that may be made in one or the other. It is not necessary that there be any fraud nor even the desire to defraud, nor intention of personal gain on the part of the person committing it, that a falsification of a public document be punishable; it is sufficient that the one who committed it had the intention to prevent the truth and to falsify the document and that by it damage might result to a third party.

In public documents the Law takes into consideration not only private interests but also the interests of the community. The Law also takes into consideration the guaranty that the Government gives this class of documents, not only because, as has already been stated, they are written acts emanating from public authority, from public corporations or from public officials, but also because from the moment that those books have been entrusted to the care of a public official, the responsibility of the Government is not to a private individual, but to all the individuals who compose society, or social order; this is the fundamental reason of the difference between the falsification of a public document and the falsification of a private document.

In a few concise words, the Supreme Court of Spain in a sentence on the 3d of June, 1873, explained that difference thus: in an official or public document it is first endeavored to protect the interest of society by the most strict faithfulness on the part of the public official in the administration of the office entrusted to him; it being immaterial whether or not the falsification caused damage to a third party.

14 On the other hand, the Law in so far as it refers to private documents, is guided by different principles, because in these

documents the damage caused to a third party is the thing principally to be considered. The fact that a public official previous to his taking office gave the required bond will not exculpate such official if he falsifies a public document, for the bond has for its object only the guaranty of the acts of the official to the State, in so far as they relate to his financial responsibility, but the responsibility of the state to the community for official or public documents under the safeguard of the State, is in no way guaranteed by that bond. For this reason the criminal law punishes that crime, it being immaterial for that purpose whether the public official did or did not file the necessary bond.

In considering whether the accused should or should not be punished in accordance with the provisions of Sec. 300 of the Code as the direct author of the crime, it is, therefore, immaterial that he did deliver in any manner to the employees at the lighthouses at Capul and Malabriga in the month of September of the same year, 1904, after the falsification had been committed, the salaries due them and appearing in the aforesaid two false entries made in the cashbook of the said Bureau.

Neither is it necessary to go into a discussion of several facts, evidence for which was introduced by the prosecution, for the purpose of showing that the accused made the aforesaid false entries in the cashbook when he saw the impossibility of making said pay-

ments, since he had disposed of the salaries belonging to the employees of the light houses of Capul and Malabriga, and because he had no money at his disposal for that purpose until the month of

September when he forwarded them to *the* their respective
15 destinations. As to the rest, the manner in which the accused, Paul A. Weems, sent or endeavored to send to their destinations certain of the sums belonging to the employees in the lighthouses of Capul and Malabriga, placing bank bills in envelopes enclosing no letter or message of any kind and depositing the same in the letter-box of the Bureau of Coast Guard, so that said envelopes might get to the hands of said employees, is a circumstance which tends to show or confirm that the entries in the book under date of June 22nd, 1904, for the respective sums of 204 and 408 pesos, were made in order to have it explained in some way, and to make it appear, that the said payments were made on time.

There was plenty of evidence in the trial to make apparent the evil intention of the accused, Paul A. Weems, in all his actions, but it is not necessary to refer here to that evidence for the reason that the falsification is evident and to punish it, it is not necessary that there be the intention to damage a third party, nor that the damage has been caused.

We must make mention, however, of a particular circumstance which makes it necessary for paymasters or disbursing officers of the several Bureaus of the Government of the United States in these Islands, to be absolutely faithful in the performance of their duties, and that is, that the vouchers are required to be signed by public officials or employees of the Government receiving salary,—as was shown at the trial,—some days prior to the time they receive compensation for their work; and if one of these official paymasters or disbursing officers committed any falsification in his cashbooks or in other documents in which the exact date of payment should be entered by him, it might easily happen that an employee
16 would never be paid his salary, because of those entries and

the employee's signature on the payroll. From this results the necessity that disbursing officers be absolutely faithful in the performance of their duties and in the making of entries in the books entrusted to them on account of their position. Cases of defraudation of the public moneys and of falsifications of public and official documents are being frequently committed by Government Officials, and for its due suppression it is necessary that the law be strictly applied.

No circumstance modifying the responsibility is to be taken in consideration in the commission of the crime at bar, for which reason the penalty corresponding to the medium degree should be applied to the accused.

Therefore, I sentence the accused, Paul A. Weems, to the penalty of fifteen years of Cadena, together with the accessories of Sec. 56 of the Penal Code, and to pay a fine of four thousand pesetas, but not to suffer imprisonment as a subsidiary punishment in case of his

insolvency, on account of the nature of the main penalty, and to pay the costs of this cause.

It is so ordered.

Manila, March 31, 1905.

(Sgd.)

MANUEL ARAULLO, *Judge.*

17 THE UNITED STATES OF AMERICA,
Islands Filipinas:

In the Court of First Instance of the City of Manila.

Criminal, 1913.

THE UNITED STATES, Plaintiff,

versus

PAUL A. WEEMS, Defendant.

Appeal.

Comes now the defendant and feeling aggrieved at the sentence rendered in this cause, appeals from the same to the Supreme Court of these Islands.

Manila, April 13, 1905.

(Sgd.)

W. A. KINKAID,

Attorney for Accused.

Received copy, April 13, 1905.

(Sgd.) JESSE GEORGE,

Prosecuting Attorney.

18 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

For Falsification of a Public Document by a Public Official.

THE UNITED STATES, Plaintiff and Ap-el-ee,

versus

PAUL A. WEEMS, Defendant and Appellant.

December 29, 1906. Registro General, 2825. Decisions Book 10, F. —.

Heard January 19, 1906. Before the Honorable President and Justices Torres, Mapa, Johnson, Carson, Willard, and Tracey.

Decision.

The appellant was charged in the Court of First Instance of Manila with the crime of falsification of a public document by a public official.

The evidence of record discloses that on or about the 22d day of June, 1904, the accused, Paul A. Weems, a duly appointed, qualified, and acting disbursing officer of the Bureau of Coast Guard and Transportation, falsified the cash book of the said Bureau by perverting the truth in the narration of the facts contained therein so as to make it appear that he, as said disbursing officer, had on the 22d day of June, 1904, paid out and disbursed, on account of the Capul light-house pay roll, voucher No. 29 for the month of May, 1904, as wages of employees in the light-house service at the said Capul light-house, the sum of P204, Philippine currency; and on account of the Malabriga light-house pay roll, voucher No. 30 for the month of May, 1904, as wages of the employees in the light-house service at the said Malabriga light-house, the sum of P408, Philippine currency, when, in truth and in fact, the said Paul A. Weems had not, as said disbursing officer nor in any other capacity, paid out or disbursed on the said 22d day of June, 1904, or on any 19 other date prior thereto, the sum of P204, Philippine currency, on voucher No. 29, nor P408, Philippine currency, on voucher No. 30, nor any part thereof except that he had paid out the sum of P204, Philippine currency, on account of voucher No. 30.

The accused admitted that he had made the said entries in the cash book showing payment in full of the pay rolls of Capul and Malabriga for the months of April and May, 1904, and that upon the said date the said employees had not received in cash the entire amounts set out in the said pay rolls but, in explanation of his conduct, he alleged that on or about the 22d day of June, 1904, he visited the light-house stations at Capul and Malabriga for the purpose of paying the wages of the light-house employees stationed there; that upon his arrival he discovered that through some mistake in his estimate he had failed to bring with him sufficient funds to make payments in full; that he had explained conditions to the employees at those light-houses; that the said light-house employees agreed to take a part of their salaries as set out in the pay rolls of April and May and requested the accused to hold the balance as a personal deposit to be paid to them when they should arrive in Manila or upon the following pay trip; that he regarded himself as personally responsible to the various employees for the amounts which had not been paid in cash and that he interpreted his agreement with these employees as in effect a payment of the amounts due upon the pay roll; and that employees were satisfied with this arrangement and so expressed themselves to him.

The chief light-house keepers at Capul and Malabriga were put upon the stand and wholly denied any knowledge of such an 20 agreement or that they, or any of their employees, had entered into such an agreement, and we are satisfied from their testimony that when the accused informed them that he had not brought enough money with him with which to pay their wages in full they accepted the amount actually paid because there was nothing else for them to do, but without surrendering their claim upon the government for the balance due them upon the pay rolls.

In the light of this testimony no credence can be given the highly improbable story of the accused, and it is necessary, therefore, to consider either the weight or pertinence of the evidence introduced by the prosecution to prove that the accused, shortly after his return from this pay trip, sent a number of cablegrams to friends in the United States begging the remittance of \$1,000 "to save him from imprisonment and disgrace," nor to take into consideration the evidence which tended to prove that, after criminal proceedings were instituted against him, the accused attempted to make surreptitious payments of the unpaid balance due on the said pay rolls for the month of May, 1904.

Counsel for the appellant relies especially upon the following alleged errors:

First. That the trial court erred in overruling the demurrer to the complaint, said demurrer being based on the ground that the accused is charged therein with having committed the offence as a public official, to wit, as disbursing officer of the Bureau of Coast Guard and Transportation of the United States Government in the Philippine Islands, and on the further ground that he is charged with falsifying a cashbook of the Bureau of Coast Guard and Transportation of the United States Government in the Philippine Islands, when, as it is alleged, an examination of existing laws discloses that no such Bureau has ever been created, the only Bureau of Coast

Guard and Transportation in the Philippine Islands being
21 the Bureau of Coast Guard and Transportation of the Philippine Government.

Second. That the trial court erred in finding that the accused was a public official in the sense in which those words are used in Article 300 of the Penal Code, which defines and penalizes the crime with which the accused was charged.

Third. That the trial court erred in finding that the cashbook in which the alleged entries were made was a public document, in the sense in which those words are used in said article.

(1) Section 10 of General Orders No. 58, is as follows:

"No information or complaint is insufficient, nor can the trial, judgment, or other proceedings be affected by reason of a defect in matter of form which does not tend to prejudice a substantial right of the defendant upon the merits."

It is sufficient answer therefore to the first assignment of error to point out that the Bureau of Coast Guard and Transportation of the Philippine Government is sufficiently described as the Bureau of Coast Guard and Transportation of the Government of the United States in the Philippine Islands, because the Philippine Government is, in fact, the Government of the United States in the Philippine Islands. The alleged defect in the complaint could not "prejudice any substantial right of the defendant upon the merits," as the language used left no room for doubt as to the Bureau which it was intended to designate.

(2) That the accused was a public official at the time when the offense was committed does not seem to admit of doubt. Article 401 of the Penal Code is as follows:

22 "For the purposes of this and of the preceding titles of this book, every person shall be considered a public official who, by the immediate provisions of law or by popular election or appointment by competent Authority, takes part in the exercise of public functions."

And while no evidence was offered by the prosecution to prove that the accused had been appointed by competent authority to the office of disbursing officer of the Bureau of Coast Guard and Transportation, nevertheless under the provisions of sub-section 13 of section 334 of the Code of Civil Procedure such appointment may be presumed because the accused admits that at the time when the offense was committed he was in the exercise of the duties of that office.

That the book in which the falsification were proven to have been made was not a mere personal notebook or memorandum wherein the accused, for his personal convenience, kept a record of certain transactions, as is alleged by counsel for appellant, and that it was in fact the official cashbook of the disbursing officer of the Bureau of Coast Guard and Transportation was conclusively established by the testimony of W. B. Hatfield, disbursing officer of the Bureau of Coast Guard and Transportation, and A. M. Easthagen, official examiner in the auditor's department; these witnesses testified that "in the performance of his duty as disbursing officer of the Bureau of Coast Guard and Transportation the principal book kept by the accused was the official cashbook of the Bureau which had been opened when that book was known as the cashbook of the captain of the port and continued in use when the office of captain of the port was consolidated with and brought under the Bureau of Coast Guard and Transportation."

Section 1 of Act No. 36 of the Philippine Commission provides that—

23 "The accounts of all collecting, disbursing and accounting officers or agents authorized to receive or disburse money or to audit accounts in these islands shall be kept, and their reports shall be rendered, in accordance with the requirements of the act passed October 3, 1900 (No. 12), prescribing the method to be adopted by the Insular Treasurer in keeping and rendering accounts of his receipt and disbursements, and the liability of such officers or agents shall be determined in the same manner as the liability of the Insular Treasurer under said act."

And section 2 of said Act No. 12, passed October 3, 1900, is as follows:

"For the purpose of all reports required by law, the Insular Treasurer shall prepare, on the books of the Treasury, tabulated statements, showing the several sources from which revenue has been received and the several purposes for which the same has been disbursed, with three columns of figures, the first column showing the amounts of Insular money actually received or disbursed, the second column showing the amounts of United States money so received or disbursed, and the third column showing the aggregate amounts so received or disbursed stated in the money of the United States,

which last-named amount shall be ascertained as provided in the next section."

We are of opinion from the evidence of record that the cashbook described in the complaint was the record which the disbursing officer of the Bureau of Coast Guard and Transportation was required to keep under the express provisions of the above-cited laws.

Counsel for the appellant urges that Act No. 90 abrogated these laws in that it provided that—

"The Auditor shall, with the approval of the Military Governor, prescribe the forms for keeping and rendering all accounts subject to his examination and settlement, which form shall conform substantially with those used by officers rendering accounts to the Treasury Department of the United States, and issue all necessary instructions to the officers and agents rendering such accounts."

It will be observed, however, that this rule simply authorizes the Auditor to prescribe the form for keeping and rendering the accounts and until such forms have been prescribed it in no wise affects the provisions of any law in force prior thereto; there is nothing in the record to show that the Auditor has undertaken to do away with the keeping of records by disbursing

24 officers as prescribed in Act No. 36, and it would seem that his authority was limited to prescribing the form and manner in which such records should be kept and that he had no authority to authorize a failure to keep such records.

Article 299 of the Code of Civil Procedure defines a public writing as—

"The written acts or record of the acts of the sovereign authority, or officials bodies and tribunals and of public officers, legislative, judicial, and executive, of the Philippine Islands, or of the United States or of any State of the United States, or of a foreign country, and public records kept in the Philippine Islands of private writings."

Under this definition there can be no question that the cashbook falsified by the defendant was a public document as required by the provisions of Article 300 of the Penal Code.

The guilt of the accused was established beyond a reasonable doubt and we find no error in the proceedings prejudicial to the rights of the accused. The judgment and sentence appealed from should be, and is hereby, affirmed, with the costs of this instance against the appellant. After the expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the court below for proper action. So ordered.

(Sgd.)

A. C. CARSON.

Concurring:

(All signed) C. S. Arellano, Florentino Torres, Victorino Mapa, E. Finley Johnson, Chas. A. Willard, James F. Tracey.

25

United States Supreme Court.

PAUL A. WEEMS, Plaintiff in Error,
versus
THE UNITED STATES, Defendant in Error,

Stipulation of Counsel.

In the above entitled cause, in view of the fact that the Court will not revise the findings of fact on writ of error, it is agreed that the evidence may be omitted from the transcript.

GREGORIO ARANETA,
Attorney General of the Philippine Islands.
W. A. KINCAID,
Attorney for Plaintiff in Error.

26 Annexed to his brief in the Supreme Court the appellant presented the following assignment of errors, to wit:

I.

The Court erred in overruling the demurrer presented against the complaint.

II.

The Court erred in holding that the cash book in question was a public document.

III.

The Court erred in holding that the accused made false entries in said cash book.

IV.

The Court erred in holding that the accused was a public official within the meaning of the law governing the falsification of public documents.

V.

There is a complete variance between the manner in which the crime has been committed as alleged in the complaint and as it has been proved.

VI.

There is a complete variance between the complaint and the evidence as to the official status of the accused.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court.

THE UNITED STATES, Plaintiff and Appellee,
versus
 PAUL A. WEEMS, Defendant and Appellant.

Comes now the defendant and appellant and excepts to the decision rendered by this Court on the 29th day of December, 1906.

Wherefore, he prays the Court to allow this exception as one in form and time filed.

Manila, January 3, 1907.

(Sgd.)

W. A. KINCAID,
Attorney for Defendant-Appellant.

Supreme Court of the Philippines, Clerk's Office.

Filed Jan. 4, 1907, 9:15 a/m/

(Sgd.) R. H.

28

JANUARY 7, 1907.

Mr. — — —.

SIR: This Supreme Court in its session of the 5th instant adopted the following resolution:

"The petition presented by Attorney Kincaid excepting to the decision of this Court rendered on the 29th of December, 1906, in cause No. 2825 against Paul A. Weems for the falsification of a public document having been submitted, the Court resolved to allow said exception as of time and form filed, and orders that it be attached to the record for proper effect."

Which I transmit to you for your information.

(Sgd.)

J. E. BLANCO,
Clerk Supreme Court, P. I.

A copy:

FISCAL AND KINCAID.

Mva.

29

R. G. No. 2825.

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

THE UNITED STATES, Plaintiff and Appellee,
versus
 PAUL A. WEEMS, Defendant and Appellant.

Comes now the defendant and appellant and prays the Court to reconsider its decision rendered in this cause on the 29th of December, 1906, according him a new trial for the following reasons:

I.

The Court erred in holding that the defect in the complaint alleged by the accused was of description and form, whereas said defect is of substance, and in refusing to so hold, the Court violated the clause in Sec. 5 of the Act of Congress of the United States of July 1, 1902, which says,—

“That in all criminal prosecutions the accused shall enjoy the right to * * * demand the nature and cause of the accusation against him.”

II.

The Court erred in overruling the demurrer of the accused presented against the complaint, violating the same clause of the same Act of Congress.

III.

The Court erred in holding that there did not exist a substantial variance between the allegations of the complaint and the evidence introduced in support of it, again violating the clause of the Act of Congress above mentioned.

30

IV.

The Court erred in holding that “the cashbook” kept by the accused was a public or official document within the meaning of the law as amended, in connection with Sec. 300 of the Penal Code.

V.

The Court erred in holding that the accused was a public official within the meaning of Sec. 300 of the Penal Code and other recent acts bearing on the matter.

VI.

The Court erred in holding that the evidence establishes the guilt of the accused beyond a reasonable ground.

Manila, January 12, 1907.

(Sgd.)

W. A. KINCAID,
Attorney for Defendant and Appellant.

Supreme Court of the Philippines, Clerk's Office.

Filed Jan. 12, 1907, 11:56 a. m.

(Sgd.) R. H.

31

JANUARY 16, 1907.

Mr. _____.

SIR: This Supreme Court in its session of the 15th instant adopted the following resolution:

“Being informed of the petition presented by Attorney Kincaid, asking for the reconsideration of the decision of this Court rendered on the 29th day of December, 1906, in the case No. 2825 against Paul A. Weems for the falsification of a public document, the Court

resolved: The petition for the reconsideration is denied, and let it remain as decided."

Which I transmit to you for your information.

(Sgd.)

J. E. BLANCO,
Clerk Supreme Court, P. I.

A Copy:

FISCAL AND KINCAID.

32 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands,

THE UNITED STATES, Plaintiff and Appellee,

versus

PAUL A. WEEMS, Defendant and Appellant.

Comes now the defendant and appellant and excepts to the final judgment rendered in this cause on the 16th instant.

Wherefore, he prays the Court to allow this exception as of time and form filed.

Manila, January 16, 1907.

(Sgd.)

W. A. KINCAID,
Attorney for Defendant-Appellant.

Supreme Court of the Philippines, Clerk's Office.

Filed Jan. 16, 1907, 9:40 a. m.

(Sgd.) R. H.

33

JANUARY 18, 1907.

Mr. ____.

SIR: This Court in its session of the 17th instant, adopted the following resolution:

"Being informed of the petition presented by Attorney Kincaid, in which an exception is taken to the final judgment rendered in cause No. 2825 against Paul A. Weems for the falsification of a public document, and a prayer is made to allow the same as of time and form filed, the Court allowed said petition and ordered the same to be attached to the record for its proper effect."

Which I transmit to you for your information.

(Sgd.)

J. E. BLANCO,
Clerk Supreme Court, P. I.

A Copy:

FISCAL AND KINCAID.

Mva.

34 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

THE UNITED STATES, Plaintiff and Appellee,

versus

PAUL A. WEEMS, Defendant and Appellant.

Comes Paul A. Weems defendant and appellant in the above entitled cause and represents:

I.

That final judgment has been rendered in said cause by which the judgment of the Court of First Instance convicting the petitioner Paul A. Weems for the offense of falsification of public document has been affirmed, in violation of the Philippine Bill as appears from the accompanying assignment of errors.

II.

Wherefore petitioner prays that he be granted a Writ of Error from the Supreme Court of the United States to the Supreme Court of the Philippine Islands with a supersedeas of the judgment and that upon the execution and approval of a bond in such sum as may be deemed sufficient, conditioned as required by law, he be admitted to bail pending such Writ of Error, in order that the judgement may be revised by the Supreme Court of the United States upon the assignment of errors presented with this petition.

35 He also prays that the record of the cause be ordered translated from Spanish to English in conformity with the rule prescribed by the Supreme Court of the United States.

(Sgd.)

W. A. KINKAID,

Attorney for Petitioner.

Supreme Court of the Philippines, Clerk's Office.

Filed Jan. 24, 1907.

36 In the Supreme Court of the United States.

In the Matter of the Petition of PAUL A. WEEMS, Plaintiff in Error,

versus

THE UNITED STATES, Defendant in Error.

Assignment of Errors.

Comes Paul A. Weems and says that in the record and proceedings in the above entitled cause there is manifest error in this, to wit:

I.

The Court erred in holding that the defect alleged by the accused in the complaint was of description and form; whereas said defect is of substance and in refusing to so hold, the Court violated

the clause of Sec. 5 of the Act of Congress of the United States of July 1, 1902, which says,—

“That in all criminal prosecutions the accused shall enjoy the right to demand the nature and cause of the accusation against him.”

II.

The Court erred in overruling the demurrer of the accused presented against the complaint, violating the same clause of the same Act of Congress.

37

III.

The Court erred in holding that there did not exist a variance between the allegations of the complaint and the evidence introduced in support of it, again violating the clause of the Act of Congress above mentioned.

IV.

The Court erred in holding that the “cashbook” kept by the accused was a public or official document within the meaning of the law as amended, in connection with Sec. 300 of the Penal Code.

V.

The Court erred in holding that the accused was a public officer within the meaning of Sec. 300 of the Penal Code and other recent acts of the Philippine Commission.

VI.

The Court erred in holding that the evidence establishes the guilt of the accused beyond a reasonable doubt.

Wherefore, said Paul A. Weems prays that the judgment of the Supreme Court of the Philippine Islands be reversed and the cause remanded to that Court with instructions to dismiss the prsecution against him.

(Sgd.)

W. A. KINKAID,
Attorney for Plaintiff in Error.

Supreme Court of the Philippines, Clerk's Office.
Filed Jan. 24, 1907.

38 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the Philippine Islands, before you, or some of you, between the United States, plaintiff and appellee and Paul A. Weems, defendant and appellant, a manifest error hath happened to the great damage of the said Paul A. Weems, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that

you have the same at Washington, on the 24th day of May, 39 1907, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States the 24th day of January in the year of Our Lord, 1907.

J. E. BLANCO,
*Clerk of the Supreme Court
of the Philippine Islands.*

The foregoing writ of error is allowed and it shall operate as a supersedeas of the judgment complained of, and upon the execution of a bond by Paul A. Weems in the sum of seven thousand five hundred pesos payable to the defendant in error, conditioned as required by law to be approved by me, he shall be entitled to his liberty pending such writ of error.

A. C. CARSON,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

40 THE UNITED STATES OF AMERICA, *ss.*

To Attorney General for the Philippine Islands:

You are hereby cited and admonished to be in and appear at the Supreme Court of the United States, to be holden at Washington, within one hundred and twenty days from the date of this citation, pursuant to a Writ of Error filed in the Clerk's office of the Supreme Court of the Philippine Islands, wherein Paul A. Weems is plaintiff in error, and the United States, defendant in error, to show cause if any there by, why the judgment in said Writ of Error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-fifth day of January, in the year of Our Lord, 1907.

A. C. CARSON,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

I admit the receipt of a copy of the above citation and accept service thereof as though regularly had this 28 day of January, 1907.

GREGORIO ARANETA,
Attorney General for the Philippine Islands.

41 THE UNITED STATES OF AMERICA,
*Philippine Islands:*THE UNITED STATES, Plaintiff and Appellee,
versus

PAUL A. WEEMS, Defendant and Appellant.

Bail Bond.

Whereas, Paul A. Weems, the defendant and appellant in the above entitled cause, has been convicted in the Supreme Court of the Philippine Islands for the crime of falsification of a public document, and a Writ of Error having been granted from the Supreme Court of the United States to the Supreme Court of the Philippine Islands for the purpose of reversing said sentence, and

Whereas, an order was issued by the Honorable A. C. Carson, Associate Justice of the Supreme Court of the Philippine Islands, after said Writ of Error had been allowed, granting the said Paul A. Weems provisional liberty while said Writ of Error is pending provided he give bail for the sum of seven thousand five hundred pesos (P7500.00);

Therefore, we, Paul A. Weems, as principal, and W. A. Kincaid and Marcelino de Santos, as sureties, by these presents bind ourselves jointly and severally that the aforesaid Paul A. Weems will pay the fine which the Supreme Court of the United States might order, and that he will give himself up to serve the sentence that the said Court may render, or that he will, in case the cause is returned for new trial, appear before the Court to which it is returned and submit to the orders and proceedings in the same, or that if he should fail to fulfill any of these conditions he will pay the

42 United States the sum of seven thousand five hundred pesos (P7500.00).

And to have it known we affix our signatures in Manila the 17th day of April, 1907.

(Sgd.)

PAUL A. WEEMS.
W. A. KINCAID.
MARCELINO DE SANTOS.

PHILIPPINE ISLANDS,
City of Manila:

Before me the undersigned authority on this day personally appeared W. A. Kincaid and Marcelino de Santos who, after being duly sworn, deposed: that they were the persons who subscribed the foregoing bond; that they are solvent and possessors of real property in the Philippine Islands, and that each one of them possesses property actually worth the amount specified in said undertaking, over all their debts and obligations and exempt from execution.

W. A. KINCAID.

Certificate of Registration No. A157286, issued in Manila, Jan. 10, 1907.

MARCELINO DE SANTOS.

Certificate of Registration No. A1498484, issued in Manila, March 5, 1907.

Sworn to and subscribed before me this 17th day of April, 1907

(Sgd.)

ROBERTO MORENO,
Notary Public.

My appointment terminates on the 31st of December, 1908.

Approved:

A. FINLEY JOHNSON,
Associate Justice, Supreme Court.

43

No. 2825.

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Court, wherein Paul A. Weems was appellant, and The United States was appellee, a final judgment was rendered by said Supreme Court on the sixteenth day of January, A. D. 1907, in favor of the said The United States, and against the said Paul A. Weems, and that on the twenty-fourth day of January, A. D. 1907, the said Paul A. Weems sued out a writ of error to said Supreme Court, directed to remove said cause to the Supreme Court of the United States.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at Manila, P. I., this twentieth day of April, A. D. 1907.

[Seal Corte Suprema, Islas Filipinas.]

(Sgd.)

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

[SEAL OF COURT.]

44 PHILIPPINE ISLANDS,

City of Manila, ss:

I, R. Heras, Acting Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing 43 typewritten pages contain a true and correct copy of so much of the record and proceedings in the case of Paul A. Weems, plaintiff in error *vs.* The United States, defendant in error, as the parties have, by written stipulation, agreed to forward to the Supreme Court of the United States at Washington, D. C.

In witness whereof, I have hereunto set my hand and affixed the

seal of the Supreme Court of the Philippine Islands this 26th day of June, A. D. 1907.

[Seal Corte Suprema, Islas Filipinas.]

R. HERAS,
*Acting Clerk of the Supreme Court
of the Philippine Islands.*

Endorsed on cover: File No. 20,885. Philippine Islands, supreme court. Term No. 193. Paul A. Weems, plaintiff in error, *vs.* The United States. Filed October 14th, 1907. File No. 20,885.

WRETT OF CERTIORARI AND

SUPREME COURT OF THE UNITED STATES

October Term, 1898

No. 90.

PAUL A. WHITEMAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES,

PLAINTIFF IN ERROR.

(20885)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 20.

PAUL A. WEEMS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 The United States of America, Philippine Islands, in the Supreme Court of said islands.

THE UNITED STATES, PLAINTIFF AND APPELLEE,
vs.

PAUL A. WEEMS, DEFENDANT AND APPELLANT. }

I, J. E. Blanco, clerk of the Supreme Court of the Philippine Islands, do hereby certify that, in compliance with the certiorari issued from the office of the clerk of the Supreme Court of the United States, which is hereto annexed, I have carefully searched the record of Cause No. 2825, The United States, plaintiff, versus Paul A. Weems, defendant, in this Supreme Court of the Philippine Islands, and that the following is a true and correct transcript of all that appears of record in said cause except such parts thereof as were included in the return to the writ of error issued therein, omitting only the evidence taken upon the trial of said cause:

2 *Preliminary investigations. Held before the Honorable Manuel Araullo, Judge of Part I of the Court of First Instance for the City of Manila, P. I., by the Assistant Municipal Prosecuting Attorney, Mr. Jesse George.*

Testimony of Mr. A. M. Easthagen.

After being duly sworn, witness testified as follows:

By Mr. GEORGE:

What is your name?

W. A. M. Easthagen.

A. Your residence?

W. 170 Real street, Ermita.

A. Your occupation?

W. Examiner in the office of the auditor.

A. Please state whether or not you have examined during the last three or five months the accounts presented by the disbursing officer of the Bureau of Coast Guard and Transportation.

W. Yes, sir.

A. When did you examine those papers?

W. I made two examinations on July 15 and August 5, approximately, this year.

A. I show you this book; tell what it is.

W. It is the official cash-book of the office of the disbursing officer of the Bureau of Coast Guard and Transportation.

A. Please also state whether that book also contains the report of the payments made by the captain of the port, whose office was abolished on February.

W. Yes, sir.

A. In that examination that you made, did you use this book?

W. Yes, sir.

3 A. Please open that book on page 190, and I call your attention to vouchers 29 and 30, and the entries made therein, underlined from the last upward, the first being ruled with blue lines from the last of the lines, and I wish you would state whether that entry was there when you made the examinations you have mentioned.

W. Yes, sir; it was.

A. Who was the disbursing officer at the time you made that examination?

W. Mr. Paul A. Weems.

A. Do you know whether Mr. Weems was the disbursing officer during the months of May and June of this year?

W. Yes, sir.

A. State whether or not you have given credit to Weems for the entries found in this book.

W. Yes, sir.

A. Why did you give him credit for those payments?

W. I have given him credit because he presented vouchers duly prepared and which are in his office.

A. Now I show you vouchers Nos. 29 and 30, which are supposed to be the vouchers presented by Paul A. Weems. Are those the vouchers to which you have referred?

W. Yes, sir.

A. Please state whether or not it appears from those vouchers that they have been paid.

W. Yes, sir.

A. Was Mr. Weems present when you made either of those examinations?

W. Yes, sir.

A. Was he present at both examinations?

W. No, sir.

A. In which examination was he present?

W. In the examination made in July.

4 A. In the examination made in July, did Mr. Weems tell you that these two vouchers had not been paid?

T. After the return of Mr. Miller, a representative of this office, from an inspection trip in these places mentioned in the document.

A. Was this before or after that examination had been made?

W. After.

(Signed) A. M. EASTHAGEN.

Testimony of W. Hatfield.

After being duly sworn, witness testified as follows:

A. Please state your name, residence, and profession.

W. W. Hatfield. 151 Malacañang. Disbursing officer of the Bureau of Coast Guard and Transportation.

A. Whose place did you take as disbursing officer of the Bureau of Transportation?

W. I did not take anybody's place; it was a position newly created.

A. Do you know who was the disbursing officer during the months of April, May, June, and July of this year?

W. The disbursing officer, Paul A. Weems.

A. Did you ever have any occasion to know the handwriting of Mr. Paul A. Weems?

W. Yes, sir.

A. I call your attention to the 2nd and 1st entries underlined with blue lines, Nos. 29 and 30 of this cash-book, and please state whether or not you recognize the handwriting.

W. I would say it is Mr. Weems'.

A. What is this book to which I have now referred, and which is before you?

W. The official cash-book of the Bureau of Transportation.

A. Which was also being used before in the office of the 5 captain of the port until that office was abolished?

W. Yes, sir.

A. In whose possession was this cash-book on the 22nd of June last?

W. Mr. Weems'.

A. Please examine those two vouchers, Nos. 29 and 30, and state what they are. What I mean is, what payments do they represent?

W. They represent payments in Capul and Punta Malabriga.

A. When did you take possession of your office as disbursing officer of the Bureau of Coast Guard?

W. On August 6, 1904.

A. When you took possession of your office, had this voucher been actually paid or no?

W. It had not been paid in full.

A. When did you discover for the first time that it had not been paid?

W. Toward the end of August or the beginning of September.

A. How did you happen to discover it?

W. The one corresponding to Capul, No. 29, was discovered on the return of my deputy disbursing officer from a trip, who informed me that the person named in this voucher had received the sums mentioned therein in a plain envelope, during the trip that I have mentioned, stating that there was a payment due to him in arrears.

A. And as regards the other, when did you discover it?

W. On September 12.

A. How did you happen to discover it?

W. Part of the money mentioned in voucher No. 30 was delivered to me by Commander Helm.

A. How did he deliver it to you?

W. In a separate envelope addressed to each one of the names contained here.

6 A. Where was that envelope found?

W. In a box in the lighthouse—in the mail box.

A. To whom was the envelope addressed?

W. To the guards and boatmen there.

A. Who had deposited that envelope there?

W. I do not know.

A. Have you ever had any conversation with Paul Weems about this?

W. I was present in the conversation that took place between Mr. Weems and Commander Helm on September 11; in the course of that conversation Mr. Weems stated that he had delivered these envelopes to Mr. Piatt.

A. Who is Mr. Piatt?

W. The clerk in the office in charge of the preservation and repairs of lighthouses.

A. Did he tell you why he had delivered those envelopes to Mr. Piatt?

W. He said that it was money belonging to the guards or watchmen of the lighthouses.

A. Was this more than one month after you had taken possession of that office?

W. Yes, sir.

A. Did you count the money contained in those envelopes to find out whether or not it corresponded to the sum mentioned in the vouchers?

W. Yes, sir.

A. Did said money correspond to that sum or not?

W. Yes, sir; it corresponded to the sum belonging to each one of those persons to whom the envelopes were addressed.

A. Was there any letter in that envelope remitting said money, and explaining the purposes for which it was remitted?

W. No, sir.

7 A. Was there any letter remitting that money in those envelopes pertaining to Capul which you had discovered?

W. Mr. Pierce said there was none.

A. Please state whether these are the envelopes discovered by Mr. Pierce.

W. Yes, sir.

A. Do the names that appear from those envelopes correspond to the envelopes corresponding to voucher No. 29, paid in Capul?

W. Yes.

A. Was that mark at the corner of the envelope put by you? And your initials?

W. Yes, sir, as a means of identification and to show the date.

A. Where did Pierce find this envelope?

W. In the cabin of the lighthouse boat.

A. While on his trip for the purpose of making payments?

W. Yes, sir.

(Signed)

H. B. HATFIELD, 11/29/04.

Testimony of Frederick Simcock.

After being duly sworn, witness testified as follows:

A. What is your name?

W. Frederick Simcock.

A. Where do you live?

W. 61 Trinidad street.

A. What is your occupation?

W. Chief clerk in the Bureau of Transportation.

A. Do you know Paul A. Weems?

W. Yes, sir.

A. Where did you know him?

W. In the office where we have worked together since the beginning of January, 1903.

A. Are you acquainted in any way with his handwriting?

8 W. Yes, sir.

A. Please look at the second entry in the official cash-book, and carefully look at the line below, two lines from the bottom, and examine the handwriting.

W. I believe this is Mr. Weems' handwriting.

A. Do you remember that some envelopes containing money were found in the Bureau of Coast Guard and Transportation during the first days of September of this year?

W. Yes, sir.

A. Do you remember whether you have been present at a conversation that took place between Mr. Helm and Mr. Weems regarding those envelopes?

W. Yes, sir.

A. Do you know what Mr. Weems said—if he said anything then—about those envelopes and their contents?

W. Mr. Weems told me that he had put some money in the envelopes addressed to several guards or watchmen in the lighthouses, and that he had left them with Mr. Piatt.

A. Do you know whether or not he had really left them with Mr. Piatt, or did he put them in a box in order that they might be dispatched by mail?

W. According to what he said, it does not clearly appear that he had delivered it to Mr. Piatt.

A. The first thing that was known when the envelopes were discovered was that they were found in a box; was it not?

W. Yes, sir.

A. In the ordinary course of business in the office, what was done with the letters in that mail box?

W. There are three boxes for the three lighthouse boats, one box for each boat. Whenever a boat is ready to start, the captain takes all the mails from the box corresponding to him on board. There

9 is a fourth box in which all the letters for the different lighthouses are placed; and the envelopes in question were found in this box.

(Signed)

FREDERICK SIMCOCK.

Testimony of Ora Miller.

After being duly sworn, witness testified as follows:

A. Please state your name, residence, and occupation.

W. Ora Miller; Isaac Peral street; employee in the office of the auditor.

A. Please state whether or not an investigation was made in the office of the auditor, as regards voucher No. 30 for the month of June, 1904, of Mr. Paul Weems, of the Bureau of Coast Guard.

W. Yes, sir; an investigation was made by me.

A. At the time you made the investigation, did you find that the men whose names appear here had been really paid or not?

W. What I found was that the persons whose names appear in this voucher had not been paid at the time the investigation was made.

A. Did you take down with your machine the sworn testimony of these men?

W. Yes, sir.

A. Please examine this sworn testimony.

W. This collection of letters are the testimony of each and every one of the employees that appear from the list.

The COURT. What number?

W. Voucher No. 30.

A. I would like to know only the names corresponding to them.

W. F. de León, E. Castilla, E. Duenas, E. Soriano, E. Alegre.

A. Was that sworn testimony taken before you as a notary public?

W. Yes, sir.

A. Did you have any seal at that time?

W. No, sir.

A. Do you have any seal now?

10 W. No, sir.

A. Did you make any investigation as regards vouchers No. 29?

W. Yes, sir.

A. What did you find there? Have those persons whose names appear there been paid or not?

W. I found that the employees whose names appear in vouchers No. 29 have received their salaries for the month of May, as it appears from the documents; that was during the last trip of the lighthouse boat.

A. From whom did they receive their salaries, and how did they receive them?

W. They received the money in a close and sealed envelope.

A. Did these envelopes contain any letters explaining the remittance?

W. The employees did not say anything whether there were any explanatory letters contained in the envelopes.

A. Was this money paid before or after Mr. Weems had ceased discharging the functions of disbursing officer?

W. After.

(Signed)

ORA MILLER.

Return upon the Order of Arrest.

United States of America, City of Manila.

I have this date arrested Paul A. Weems, and delivered him to the proper court.

Manila, November 29, 1904.

(Sgd)

JAMES J. PETERSON,
Sheriff, City of Manila.

Sheriff's fee ₱1.12.

I hereby certify that on this date the accused gave a bond in the amount of \$2,000.00 gold to the satisfaction of the court. Recorded at Book No. 2, p. 141.

Manila, December 1, 1904.

(Sgd) C. A. SOBRAL,
Assistant Clerk, Court of First Instance,
Manila, P. I.

Surties:

B. F. Rahmeyer, 150 Santa Potenciana,
Henry M. Jones, 381 Calle S. Marcelino.

12 United States of America, Philippine Islands, in the Court of First Instance for the City of Manila.

THE UNITED STATES, PLAINTIFF, }
vs. } No. 1913. Falsification of a Public
PAUL A. WEEMS, DEFENDANT. } Document by a Public Official.

Motion.

The undersigned prosecuting attorney moves the court to overrule the demurrer of the defendant filed herein for the following reasons:

Under the provisions of section 6 of general order 58 a complaint or information is sufficient if it shows

1st. The name of the defendant.

This complaint complies with that requisite, and the name of the defendant is alleged therein as "Paul A. Weems."

2nd. The complaint or information must give the designation of the crime or public offense charged.

This it does, both in the caption and in the first paragraph of the complaint, exactly as required by said general order 58. The offense is designated as "falsification of a public document by a public official." By reference to article 300, taken in connection with article 301, of the Penal Code, it will be seen that it provides for the falsification of a public document by a public official, which is a distinct crime from the falsification of a public document by a private individual, the punishment of which is provided for by article 301 of the code, and also a crime distinct from the falsification of a private document, punished by the provisions of article 304 of said code.

13 The complaint has, hence, clearly and specifically designated the crime provided for and punished by article 300 of the Penal Code, in exact accordance with the second requirement of section 6 of general order 58.

3rd. The third requirement of general order 58 is that the complaint must set out the acts or omissions complained of as constituting the crime or public offense in ordinary and concise language, without repetition, not necessarily in the words of the statute, but in such form as to enable a person of common understanding to know what is intended, and the court to pronounce judgment according to right.

This provision has been complied with, in that the complaint alleges, first, that Paul A. Weems was a public official of the United States Government of the Philippine Islands at the time the offense was alleged to have been committed, and the exact office that he held at the time is given: second, that on or about the 22nd day of June, 1904, the defendant falsified a public and official document, which document is named and specifically described in the complaint as the cash-book of the captain of the port of Manila, Philippine Islands, and the Bureau of Coast Guard and Transportation of the United States Government of the Philippine Islands, kept by the said defendant as disbursing officer of the said Bureau of Coast Guard and Transportation as an official record and document of his said office, and of the office of the captain of the port and the Bureau of Coast Guard and Transportation of the Philippine Islands, for the purpose of recording and keeping accounts therein of the receipts and disbursements in said Bureau of Coast Guard and Transportation, made by the said Paul A. Weems as said disbursing officer. It would seem that the document could not be more definitely and clearly defined and described. Third, it is alleged that the defendant, taking advantage

14 of his said official position, corruptly and with the intent then and there to deceive and defraud the United States Govern-

ment of the Philippine Islands and its officials, falsify such document by perverting the truth in the narration of the facts contained in the said record or document, and by causing the document to appear and show on its face that the said defendant, as disbursing officer, had then and there paid out the sum of four hundred eight (408.00) pesos as wages at Malibriga lighthouse, and two hundred four (204.00) pesos as wages at Capul lighthouse, when in fact he had not paid out or disbursed such sums. In order to make the complaint more specific, every word, figure, and mark that is alleged to be falsified is set out and quoted at length in the complaint, with a particular description of the column, line, and page on which each mark was entered, and in such a way that no one of common understanding could fail to understand clearly that the said defendant had made a false entry in his cash-book and given himself credit for the payment of sums of money that he had never paid out.

4th. The fourth requirement of general order 58 is that the complaint must show that the offense was committed within the jurisdiction of the court and is triable therein.

The complaint alleges that the crime was committed in the city of Manila, Philippine Islands, and the crime charged is a grave one, of which this court, and not the municipal court, has jurisdiction.

5th. The fifth requirement of general order 58 is that the names of the persons against whom or against whose property the offense was committed, if known, must be set out in the complaint.

This has been done. It is specifically alleged that the crime was committed with the intent then and there to deceive and defraud the United States Government of the Philippine Islands and its officials.

15 The above is a complete answer, as the prosecution believes, to the first four grounds in the defendant's demurrer.

As to the fifth objection, viz, "No copy has been inserted in the complaint of the document falsified, nor copy of the same attached thereto," there is no provision or requirement in general order 58 that the document declared on shall be either set out in full in the complaint or a copy thereof attached to the complaint; nor is there such a requirement in civil proceedings in the Philippine Islands. In the present case it will be noted by reference to the complaint that the document alleged to be falsified is a cash-book; that the falsification was committed on page 190 of said cash-book; and it is perfectly manifest that to attach a copy of a cash-book of at least one hundred and ninety pages would be useless and a foolish encumbering of the record. An exact copy of that portion of the cash-book alleged to have been falsified is set forth in the complaint, and this is even more than general order 58 requires; for, as it is stated above, there is absolutely no requirement of law in the Philippine Islands requiring that a document declared on, either in a civil or criminal case, must be set out in the pleadings or a copy thereof attached.

Dated at Manila, P. I., this 5th day of December, 1904.

CHAS. H. SMITH,
Prosecuting Attorney.

Received copy of above this —— day of December, 1904.

JG-RS

16 United States of America, Philippine Islands, in the Court of First Instance for the City of Manila, Part ——.

THE UNITED STATES
vs.
PAUL A. WEEMS. } No. 1913. Arraignment.

Present, the assistant prosecuting attorney for the city of Manila, Mr. Abreu, and the defendant in this case, Paul A. Weems, who stated that he did not need the presence of his counsel, Mr. Kincaid, and after being informed of the contents of the information filed

against him in this court for the offense of falsification, and after serving on him a copy of said information, the said defendant plead not guilty of the offense as charged therein.

Manila, December 12, 1904.

(Sgd.)

C. A. SOBRAL,

Assistant Clerk.

17 United States of America, Manila, Philippine Islands, in the Court of First Instance of the Judicial District of Manila.

THE UNITED STATES
vs.
PAUL A. WEEMS. } No. 1913. Subpœna.

To W. W. Barre	of Acting auditor.
" A. M. Easthagen	" Examiner, auditor's office.
" Ora Miller	" "
" James L. Pierce	" Coast Guard & Trans. Dept.
" Mr. Piatt	" "
" Mr. Simecock	" "
" Capt. Franklin	" "
" Mr. Hatfield	" "
" Commander J. M. Helm	" "
" A. Zulueta	" c/o " Lipata lighthouse, Capul.
" M. Gregorio	" " Malabriga lighthouse.
" Engineer Thompson	" "

Greeting: You are hereby commanded to be and appear in the Court of First Instance of the judicial district of Manila, Part I, No. 47 Calle Palacio, Intramuros, at 8 o'clock on the 27th day of December, 1904, then and there to testify in the above-entitled cause pending therein.

Fail not, under the penalty of the law.

Witness the honorable judge of said court this 13th day of December, 1904.

(Sgd.)

C. A. SOBRAL,

Assistant Clerk.

18 United States of America, Philippine Islands, in the Court of First Instance for the City of Manila.

THE UNITED STATES, PLAINTIFF,
vs.
PAUL A. WEEMS, DEFENDANT. } No. —. Falsification.

Præcipe.

The clerk will please issue a subpoena duces tecum to Mr. E. Desnouie, superintendent Commercial Pacific Cable Co., Manila, P. I., to appear as a witness on behalf of the prosecution, at 8.00 a. m. on the 27th day of December, 1904, in the trial of the above-entitled

directed to Mary Avanzino, Reno, Nevada, signed Joe; July 1st, 1904, addressed to Dennis, Suttercreek, signed Capurro; June 29th, 1904, directed to Johnson, care John Cay, Atlanta, signed Paul; July 3rd, 1904, directed to Weems, Greenwood, Mississippi, signed Vanderpool; July 7th, 1904, directed to Weems, Greenwood, Mississippi, signed Vanderpool; and of July 9th, 1904, directed to Mary, Newman, signed Paul.

Respectfully,

CHAS. H. SMITH,
Prosecuting Attorney.

JG-RS-la-22-04.

19 United States of America, Philippine Islands, in the Court of First Instance for the City of Manila.

THE UNITED STATES
vs.
PAUL A. WEEMS. } No. 1913. Subpoena duces tecum.

To E. DESNOUE, *Superintendent, Commercial Pacific Cable Co., Manila, P. I.*

Greeting: You are hereby required to appear before the Court of First Instance for the City of Manila, Part I, No. 47 Calle Palacio, Intramuros, on the 27th day of December, 1904, at 8 o'clock in the forenoon, and to bring with you into court the following described documents: The original cablegrams of July 1, 1904, directed to Mary Avanzino, Reno, Nevada, signed Joe; July 1, 1904, addressed to Dennis, Suttercreek, signed Capurro; June 29, 1904, directed to Johnson, care John Cay, Atlanta, signed Paul; July 3, 1904, directed to Weems, Greenwood, Mississippi, signed Vanderpool; July 7, 1904, directed to Weems, Greenwood, Mississippi, signed Vanderpool; and of July 9, 1904, directed to Mary, Newman, signed Paul; it being necessary to use the same as testimony in a cause there pending,
20 wherein the United States is plaintiff and Paul A. Weems is defendant.

Hereof fail not, under penalty of the law.

Witness the honorable judge of said court this 22nd day of December, 1904.

(Sgd.) C. A. SOBRAL,
Assistant Clerk.

21 United States of America, Manila, Philippine Islands, in the Court of First Instance of the Judicial District of Manila.

THE UNITED STATES
vs.
PAUL A. WEEMS. } No. 1913. Subpoena.

To Capt. Dr. HEIZER, *of Quarantine Station, Manila, P. I.*

Greeting: You are hereby commanded to be and appear in the Court of First Instance of the judicial district of Manila, Part I, No.

47 Calle Palacio, Intramuros, immediately to testify in the above-entitled cause pending therein.

Fail not, under the penalty of the law.

Witness the honorable judge of said court this 27th day of December, 1904.

(Sgd.)

C. A. SOBRAL,
Assistant Clerk.

22 United States of America, Manila, Philippine Islands, in the Court of First Instance of the Judicial District of Manila.

THE UNITED STATES
vs.
PAUL A. WEEMS. } No. 1913. Subpœna.

To Dr. V. G. HEIZER, *of 53 P. McKinley W. C.*

Greeting: You are hereby commanded to be and appear in the Court of First Instance of the judicial district of Manila, Part I, No. 47 Calle Palacio, Intramuros, immediately to testify in the above-entitled cause pending therein.

Fail not, under the penalty of the law.

Witness the honorable judge of said court this 28th day of December, 1904.

(Sgd.)

C. A. SOBRAL,
Assistant Clerk.

23 United States of America, Manila, Philippine Islands, in the Court of First Instance of the Judicial District of Manila.

THE UNITED STATES
vs.
PAUL A. WEEMS. } No. 1913. Subpœna.

To Capt. FRANKLIN, *of Coast Guard and Transportation Dept.*

Greeting: You are hereby commanded to be and appear in the Court of First Instance of the judicial district of Manila, Part I, No. 47 Calle Palacio, Intramuros, immediately to testify in the above-entitled cause pending therein.

Fail not, under the penalty of the law.

Witness the honorable judge of said court this 28th day of December, 1904.

(Sgd.)

C. A. SOBRAL,
Assistant Clerk.

24 United States of America, Philippine Islands, in the Supreme Court of the Philippine Islands.

THE UNITED STATES, PLAINTIFF,
against
PAUL A. WEEMS, DEFENDANT. } Motion.

Comes now the plaintiff in the above-entitled cause, and says:

1. That the accused Paul A. Weems, formerly disbursing officer

of the Bureau of Coast Guard and Transportation, was tried and convicted by the Court of First Instance of Manila of the crime of falsification of a public document.

2. That an appeal was taken from said sentence of the Court of First Instance, and that said appeal is now pending before this honorable court.

3. That the prosecution introduced in evidence against the accused certain envelopes marked Exhibits 14, 15, 16, 17, 18, and 19, which contained various sums of money amounting in all to the sum of two hundred and four (P204) pesos, Philippine currency.

4. That said money having been duly counted and exhibited before the trial court (see pages 97 and 98 of the record), is no longer necessary as evidence against the accused.

25 5. That the said sum of money was and is still retained by the clerk of the Court of First Instance of Manila as a part of the evidence duly introduced against the accused.

6. That the proofs in this cause show that said sum of money was a part of the official funds of said Paul A. Weems and should be deposited to his credit.

7. That the auditor of the Philippine Islands desires to close up the accounts of the said Paul A. Weems, and is unable to do so until said money has been deposited to the credit of said Paul A. Weems.

Wherefore it is prayed that an order issue from this honorable court directing the clerk of the Court of First Instance of the city of Manila to deposit said sum of two hundred and four (P204) pesos, Philippine currency, with the insular treasurer to the credit of Paul A. Weems, as late disbursing officer of the Bureau of Coast Guard and Transportation.

(Sgd.) GREGORIO ARANETA,
Solicitor-General.

Copy received:

(Sgd.) W. A. KINCAID.

Filed in the clerk's office of the Supreme Court of the Philippine Islands this 6 day of September, 1905.

(Sgd.) J. E. BLANCO, *Clerk,*
By H. D. McGEORGE, *Deputy.*

26 United States of America, Philippine Islands, Supreme Court of the Philippine Islands.

THE UNITED STATES, PLAINTIFF, }
vs. } Stipulation.
PAUL A. WEEMS, DEFENDANT. }

It is hereby agreed between the plaintiff and defendant in the above-entitled cause that the sum of two hundred and four (204) pesos, Philippine currency, introduced as evidence by the plaintiff in the trial of said cause in the Court of First Instance for the city of

Manila, and which is actually in the possession of the clerk of said trial court, is part of the Government's funds which the said defendant, Paul A. Weems, had in his possession, as ex-disbursing officer of the Bureau of Coast Guard and Transportation; and it is further agreed that the said sum of two hundred and four (204) pesos, Philippine currency, be deposited by the clerk of said trial court in the treasury of the Philippine Islands to the credit of the said defendant, Paul A. Weems, as ex-disbursing officer of the Bureau of Coast Guard and Transportation, upon a formal order of the Supreme Court of the Philippine Islands.

(Sgd.)

L. R. WILFLEY,

Attorney-General.

(Sgd.)

W. A. KINCAID,

Attorney for defendant.

Filed in the clerk's office of the Supreme Court of the Philippine Islands this 15 day September, 1905.

J. E. BLANCO, Clerk,

(Sgd.) By H. D. McGEORGE, Deputy.

27

SEPTEMBER 16, 1905.

SIR: In its session on the 15th inst., the Supreme Court ordered as follows:

"After due consideration of the agreement presented by the Attorney-General, on behalf of the Government, and Mr. W. A. Kincaid, on behalf of Paul A. Weems, accused in case No. 2825 of the crime of falsification of public document, in which agreement it is stipulated that the sum of two hundred and four (204) pesos, Philippine currency, introduced as evidence by the plaintiff in the trial court, and which is actually in the possession of the clerk of said trial court, shall be deposited in the treasury of the Philippine Islands to the credit of the accused Weems, as ex-disbursing officer of the Bureau of Coast Guard and Transportation, the court hereby orders the clerk of the Court of First Instance for the city of Manila to deposit the aforesaid sum of two hundred and four (204) pesos, Philippine currency, in the insular treasury to the credit of the accused, Paul A. Weems."

I herewith forward said order to you for your information and compliance.

Very respectfully,

(Signed) J. E. BLANCO,

Clerk of the Supreme Court of the Philippine Islands.

In witness whereof I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this 20th day of July, 1909.

[SEAL.]

J. E. BLANCO,

Clerk of the Supreme Court of the Philippine Islands.

28 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the Supreme Court of the Philippine Islands, greeting:

Whereas in a certain suit in said Supreme Court between Paul A. Weems, appellant, and The United States, appellee, which [SEAL.] suit was removed to the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"All parts of the record in this cause which have been omitted from the record now on file, except the evidence."

You therefore are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of May, A. D. 1909.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

(Indorsement on cover:) File No., 20885. Supreme Court U. S. October term, 1909. Term No., 20. Paul A. Weems, plff in error, vs. The United States. Writ of certiorari and return. Filed Sept. 11th, 1909.

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Office Supreme Court, S. C.
FILLED.

APR 27 1908

JAMES H. MCKENNEY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. ~~112~~ 26.

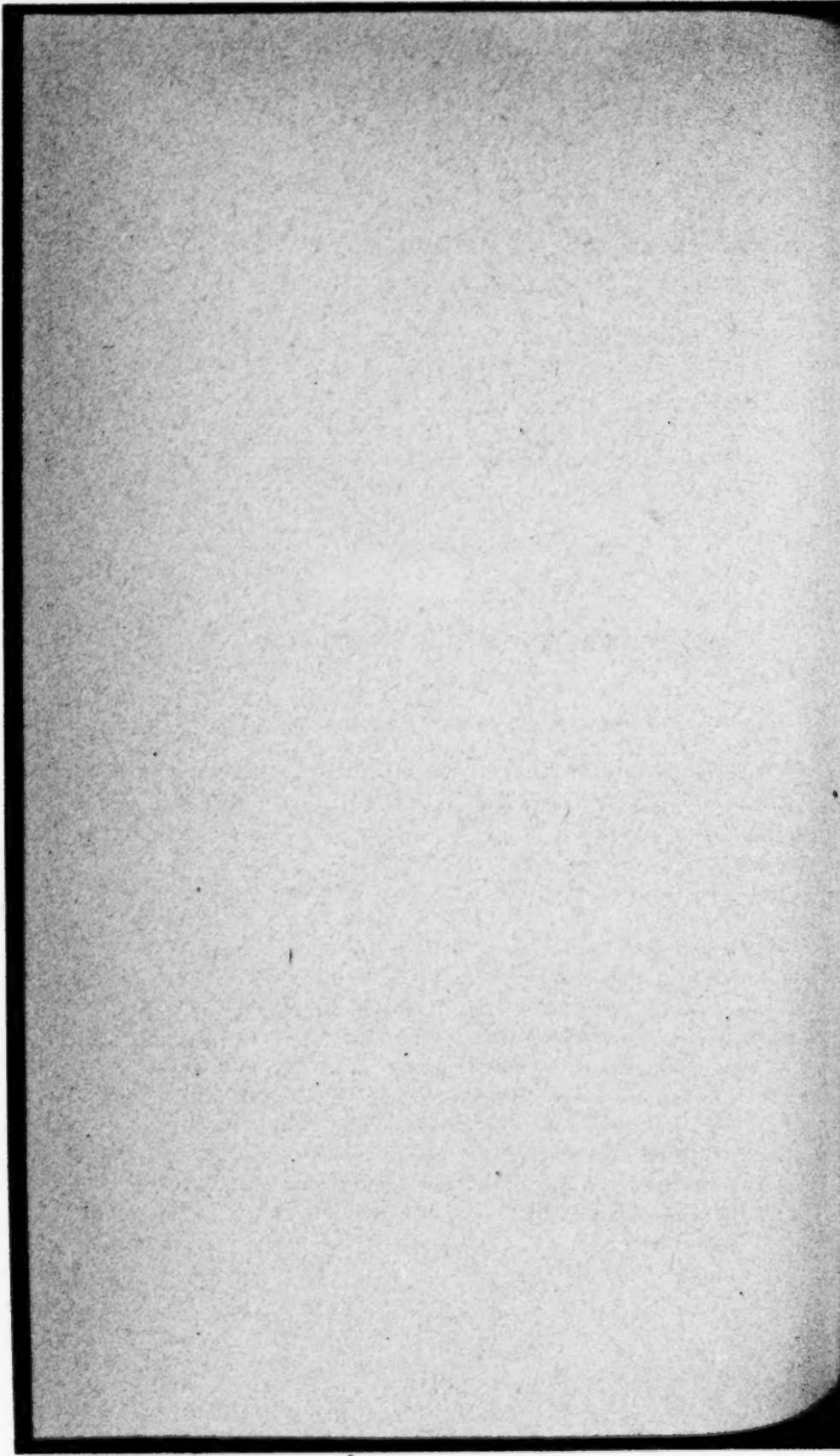
PAUL A. WEEMS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

BRIEF FOR PLAINTIFF IN ERROR.

A. S. WORTHINGTON,
Attorney for Plaintiff in Error.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 193.

PAUL A. WEEMS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case.

The plaintiff in error was convicted in the court of first instance for the city of Manila, in the Philippine Islands, of falsifying "a public and official document." On appeal the conviction was affirmed by the Supreme Court of the Philippine Islands. A writ of error was thereupon sued out from this court.

The record sent up to this court does not contain any of the evidence at the trial, nor does it contain any bill of exceptions. The questions involved, therefore, are those which arise on the face of the record of the proceedings in the case.

In the information—or "complaint"—by which the prosecution was begun, it was charged that Weems was "a duly appointed, qualified, and acting disbursing officer of the Bureau of Coast Guard and Transportation of the United States Government of the Philippine Islands," and that he took advantage of his official position to deceive and defraud

"the United States Government of the Philippine Islands and its officials" by falsifying a certain cash-book, which was an official record, by entering therein untrue statements as to payments to the employés of two lighthouses in the Philippines. The amount of the entries in excess of the alleged payments was in all 408 pesos, or \$204.00. A demurrer was filed to the complaint (Record, 4). The grounds of objection stated in the demurrer were: (1) That the facts charged in the complaint did not constitute a public offense; (2) that the complaint is vague, and it is impossible to deduce therefrom the facts upon which the accusation for the crime of falsification of a public document by a public official is based; (3) that the complaint is not drawn up in such a way that a person of average intelligence can understand what is alleged therein; (4) that it is impossible to understand the accusation from the vague narration in the complaint of the facts as to the entries and falsifications therein complained of; and (5) a copy of the falsified documents had not been inserted in the complaint, nor was a copy of the same attached thereto.

The demurrer was overruled by the trial court (5). This order concludes: "Said demurrer is overruled, and the defendant is ordered to plead to the complaint." It does not appear by the record that any plea was ever filed, or that the defendant was ever arraigned. All that appears in the record after the order overruling the demurrer is the opinion of the trial court concluding with a sentence of fifteen years' imprisonment (5-9); the appeal to the Supreme Court of the Philippines (10); the opinion of the Supreme Court of the Philippines, concluding with an affirmance of the judgment (10-14); a motion for a rehearing, and the overruling thereof (16-18); and the papers relating to the proceedings in taking and perfecting the writ of error from this court.

The following assignments of error were appended to the brief of the accused in the Supreme Court of the Philippines (15):

"1. The court erred in overruling the demurrer presented against the complaint.

"2. The court erred in holding that the cash book in question was a public document.

"3. The court erred in holding that the accused made false entries in said cash book.

"4. The court erred in holding that the accused was a public official within the meaning of the law governing the falsification of public documents.

"5. There is a complete variance between the manner in which the crime has been committed as alleged in the complaint and as it has been proved.

"6. There is a complete variance between the complaint and the evidence as to the official status of the accused."

In his motion for a rehearing in the Supreme Court of the Philippines, the following grounds were stated for the motion (17) :

"1. The court erred in holding that the defect in the complaint alleged by the accused was of description and form, whereas said defect is of substance, and in refusing to so hold, the court violated the clause in section 5 of the act of Congress of the United States of July 1, 1902, which says—

"That in all criminal prosecutions the accused shall enjoy the right to . . . demand the nature and cause of the accusation against him."

"2. The court erred in overruling the demurrer of the accused presented against the complaint, violating the same clause of the same act of Congress.

"3. The court erred in holding that there did not exist a substantial variance between the allegations of the complaint and the evidence introduced in support of it, again violating the clause of the act of Congress above mentioned.

"4. The court erred in holding that "the cashbook" kept by the accused was a public or official document within the meaning of the law as amended, in connection with section 300 of the Penal Code.

"5. The court erred in holding that the accused was a public official within the meaning of section 300 of the Penal Code and other recent acts bearing on the matter.

"6. The court erred in holding that the evidence establishes the guilt of the accused beyond a reasonable ground."

The petition for a rehearing was denied (17-18).

When the writ of error from this court was sued out the following assignment of errors was annexed to the petition for the writ (19) :

"1. The court erred in holding that the defect alleged by the accused in the complaint was of description and form; whereas said defect is of substance and in refusing to so hold, the court violated the clause of section 5 of the act of Congress of the United States of July 1, 1902, which says:

"That in all criminal prosecutions the accused shall enjoy the right to . . . demand the nature and cause of the accusation against him."

"2. The court erred in overruling the demurrer of the accused presented against the complaint, violating the same clause of the same act of Congress.

"3. The court erred in holding that there did not exist a variance between the allegations of the complaint and the evidence introduced in support of it, again violating the clause of the act of Congress above mentioned.

"4. The court erred in holding that the 'cash-book' kept by the accused was a public or official document within the meaning of the law as amended, in connection with section 300 of the Penal Code.

"5. The court erred in holding that the accused was a public officer within the meaning of section 300 of the Penal Code and other recent acts of the Philippine Commission.

"6. The court erred in holding that the evidence establishes the guilt of the accused beyond a reasonable doubt."

After a careful examination of the opinion of the Supreme Court of the Philippine Islands in this case, and a consideration of the fact that none of the evidence at the trial is set forth in the record, counsel for the plaintiff in error in this court has reached the conclusion that several of the questions which were presented to the Supreme Court of the Philippine Islands—which court had the evidence before it—cannot be raised in this court. Only one point raised in the courts

below will be discussed in this brief. It is the subject of the first assignment of error. And three others questions which counsel here conceives should be brought to the attention of this court were not presented to the Supreme Court of the Philippine Islands, so far as the record discloses, and are not included in the assignment of errors which were filed with the petition for a writ of error. Nevertheless, it is thought that they are of such importance that this court will exercise the right reserved to it by rule 35 and consider them, even though not raised at such a time as entitles the plaintiff in error, as a matter of right, to have them considered here.

Assignment of Errors.

1. The court below erred in overruling the demurrer to the complaint, this assignment being based upon the fact that in the complaint the plaintiff in error is described as "disbursing officer of the Bureau of Coast Guard and Transportation of the United States Government of the Philippine Islands," and the cash-book referred to in the complaint is described as a cash-book "of the captain of the port of Manila, Philippine Islands," whereas there is no such body politic as the "United States Government of the Philippine Islands."
2. The record does not disclose that the plaintiff in error was arraigned, or that he pleaded to the complaint after his demurrer was overruled and he was "ordered to plead to the complaint."
3. The record does not show that the plaintiff in error was present when he was tried, or, indeed, that he was present in court at any time.
4. The punishment of fifteen years' imprisonment was a cruel and unusual punishment, and to the extent of the sentence the judgment below should be reversed on this ground.

ARGUMENT.

I.

**IF WEEMS WAS A PUBLIC OFFICIAL OF ANY GOVERNMENT,
IT WAS THE GOVERNMENT OF THE PHILIPPINE ISLANDS, AND
NOT THE UNITED STATES GOVERNMENT.**

By the act of Congress of March 8, 1902, entitled "An act temporarily to provide revenue for the Philippine Islands and for other purposes" (32 Stat., 54), it was provided, among other things, that duties and taxes collected in the Philippine Archipelago, and duties and taxes collected in the United States upon articles coming from the Philippines shall not be covered into the general fund of the Treasury of the United States, "but shall be held as a separate fund and paid into the Treasury of the Philippine Islands, to be used and expended for the government and benefit of said islands."

The act of Congress of July 1, 1902, entitled "An act temporarily to provide for the administration of the affairs of civil government of the Philippine Islands and other purposes" (32 Stat., 691), provides a comprehensive scheme for the government of the Philippines. In a great variety of ways it distinguishes between the Government of the United States and the Government of the Philippine Islands. For instance, by section 4 it is declared that certain inhabitants of the islands and their children "shall be deemed and held to be citizens of the Philippine Islands, and as such entitled to the protection of the United States." By section 53 it is provided that "Every person above the age of twenty-one years who is a citizen of the United States or of the Philippine Islands, or who has acquired the rights of a native of said islands under and by virtue of the Treaty of Paris," shall have the right to enter vacant coal lands in the island. By section 67 it is provided that municipal bonds issued for

public improvements in the Philippine Islands "shall be exempt from the payment of all taxes or duties of the Government of the Philippine Islands or any local authority therein or the Government of the United States." In section 71 the same language is used in reference to certain sewer bonds of the city of Manila. Section 73 authorizes "the Government of the Philippine Islands" to levy and collect taxes in Manila to pay the sewer bonds in question. Section 74 empowers "the Government of the Philippine Islands" to grant certain important franchise privileges and concessions. Sections 76 to 83, inclusive, authorize the "Government of the Philippine Islands" to establish mints and issue coins. Section 81 authorizes "the Government of the Philippine Islands" to make arrangements with the Secretary of the Treasury of the United States for the coinage of subsidiary coins.

The same distinction is maintained in the act of Congress of March 2, 1903, entitled "An act to establish a standard of value and to provide for a coinage system in the Philippine Islands" (32 Stat., 952). For instance, section 6 authorizes "the government of the Philippine Islands" to issue certain certificates of indebtedness, and provides that "said certificates shall be exempt from the payment of all taxes or duties of the government of the Philippine Islands or any local authority therein or of the Government of the United States."

The same distinction is everywhere observed in the legislation of the Island government.

Section 3395 (Compilation of the Acts of the Philippine Commission, 1908) reads as follows:

"Every person, resident in the Philippine Islands, owing allegiance to the *United States* or the *government of the Philippine Islands*." . . .

Section 3396 reads:

"Every person owing allegiance to the *United States* or to the *government of the Philippine Islands*, and having knowledge of any treason against them or either of them." . . .

And section 3397:

"Any person who incites, establishes, assists or engages in any rebellion or insurrection against the authority of the *United States* or that of the *government of the Philippine Islands*."

Section 3398 lends more emphasis, for it states:

"If two or more persons conspire to overthrow, put down or destroy by force the *Government of the United States in the Philippine Islands or the government of the Philippine Islands*, or by force to prevent, hinder or delay the execution of *any law of the United States or of the Philippine Islands* or by force to seize or take any property of *the United States or of the government of the Philippine Islands*."

Section 3399 is very clear in this respect, for the *insular government* is always spoken of as an entity, and in its number 5 sets forth:

"... or the *insular government*, or the *Government of the United States or of the property of either of them*."

In section 3402 the crime of uttering libels, &c., *against the Government of the United States or the insular government* of the Philippine Islands is dealt with.

Section 2570, relating to eminent domain, states:

"*The government of the Philippine Islands* and that of any province or department thereof, or of any municipality, shall have the right to condemn private property, &c., for public use."

Section 1366, which details the duties of the attorney general, states:

"(a) He shall attend the Supreme Court and prosecute or defend therein all causes, civil or criminal, to which the *United States* or any officer thereof, in his official capacity, is a party."

"(b) He shall prosecute and defend therein all civil and criminal causes to which the government of the *Philippine*

Islands, or any officer thereof, in his official capacity is a party; and all causes to which any province may be a party, unless the interest of the province shall be adverse to that of the government of the Islands, or that of the United States or some other province."

And still more decisively:

"(c) After judgment is rendered in favor of the party represented by him in any of the cases mentioned in the preceding section, he shall direct the issuing of such process as may be necessary to carry the same into execution, and shall account for and pay to the proper officer, *all money* that may come into his possession *belonging to the Government of the United States, that of the Philippine Islands, or any province.*"

This objection does not relate to a matter of form. It is as substantial as the point involved in Carrington's case (208 U. S., 1), where a military officer of the United States was prosecuted as a civil officer of the government of the Philippines.

II.

THE FACT THAT THE RECORD IN THIS CASE DOES NOT SHOW AFFIRMATIVELY THAT THE PLAINTIFF IN ERROR WAS EVER ARRAIGNED, OR THAT HE EVER PLEAD TO THE COMPLAINT, IS A FATAL DEFECT.

In this connection it would seem to be necessary to refer only to the case of *Crain v. United States*, 162 U. S., 625. It appeared from the record in that case that there had been a trial "of the issue joined" between the United States and the plaintiff in error, but the record did not show what the issue was. It was accordingly held that the judgment must be reversed. The objection had not been made in the lower court, and does not appear to have been assigned as error in this court, although the point was mentioned at the end of the brief of the plaintiff in error. In the opinion of the

majority of the court in that case, which was delivered by Mr. Justice Harlan, the English and American cases up to that time and the leading text-books on criminal law and procedure are cited. Three members of this court dissented, but cited no authority.

The adjudications would appear to be almost uniformly to the effect that where there has been a conviction for an infamous offense, and the record does not show that the defendant was arraigned, or that he pleaded to the indictment, the judgment of conviction will be set aside.

In the case now before the court the record is much more defective than in the case of *Crain v. United States*. All it says is that when the demurrer was overruled, the plaintiff in error was ordered to plead to the complaint. It does not distinctly appear that there was any issue before the court to be determined.

The demurrer, as is customary in criminal procedure, was filed by the defendant's attorney. When a demurrer is filed the defendant is not arraigned until after the demurrer has been disposed of. The very purpose of an arraignment is to identify the person accused and to render it certain that he in person, and not through counsel, is advised of the charge against him.

In *Crain v. U. S.*, *supra*, it was decided that this court will reverse a conviction of an infamous offense for a defect of this character, even though the objection was not raised in the lower courts.

It is unnecessary to review the cases in other courts prior to that decision, because they are fully set forth by Mr. Justice Harlan in the prevailing opinion.

Since *Crain v. U. S.* was decided, a number of cases involving the same question have come before various State courts.

In *State v. Coston*, 113 La., 718, the record showed that the accused (who was charged with grand larceny), "assisted by his counsel, Wm. C. Pegues, Esq.," in open court with-

drew his plea of not guilty, and pleaded guilty to petty larceny. It was held that the conviction must be set aside because the minutes did not show affirmatively that the defendant was present in court in person when the plea of guilty was entered.

In the recent case of *State v. Cisco*, 186 Mo., 49, which was submitted to the Supreme Court of Missouri on the record, there being no appearance for the accused, the court of its own motion reversed the judgment against him because it did not affirmatively appear that the defendant had been arraigned.

In three still more recent cases in the courts of appeal in the same State, the same conclusion has been reached on the same state of facts (*State v. Sharpe*, 119 Mo. App., 386; *State v. Mikel*, 125 Mo. App., 287; *State v. Ambrose*, 125 Mo. App., 464). In the first of these cases the State conceded the point. In the second case the court expressly held that it is immaterial whether the point was made in the lower court.

In *Hamilton v. State*, 41 Southern Reporter, 940, decided in 1906, the Supreme Court of Alabama held that a conviction of larceny must be reversed because the record did not make it clear that the defendant had pleaded to the indictment.

But the most important of the recent cases on this subject is *State v. Walton*, 91 Pac., 490, which was decided by the Supreme Court of Oregon in 1907. The charge in that case was robbery. A demurrer to the indictment was overruled. Three weeks afterwards the defendant was tried and convicted. After verdict his counsel opposed his being sentenced on the ground that he had not been "fully arraigned" and had not pleaded to the indictment. The trial court held that he had waived the point by going to trial without making the objection, and sentenced him to 20 years' imprisonment. The judgment was reversed solely on the ground that there had been no arraignment or plea.

The opinion in this Oregon case contains a full and able discussion of the question involved on principle and on authority. It is said that the cases cited as sustaining a contrary conclusion, with one exception (*Martin v. Territory* 14 Okl., 593), were decided prior to *Crain v. U. S.* in this court.

III.

THE OMISSION OF ANY STATEMENT IN THE RECORD THAT THE DEFENDANT WAS PRESENT AT THE TRIAL IS ANOTHER FATAL DEFECT.

The record fails to show that Weems was ever brought into court for any purpose. There is nothing to indicate it except some statements in the opinion of the Supreme Court of the Philippine Islands as to his testimony at the trial. There is nothing in the opinion and judgment of the Court of First Instance to suggest that he testified in the case or was present at all. Certainly something more than an inference from the opinion of an appellate court is required to show that a person accused of a crime, that may be punished by a long term of imprisonment, was present at his trial. His presence was essential to a valid trial and could not be waived (1 Bish. Cr. Pro., 271; 1353).

In *Hoyt v. Utah*, 110 U. S., 574, this court set aside a conviction of murder because the examination of some of the jury panel as to their qualifications to sit in the case took place out of the presence of the accused, although neither he nor his counsel made any objection to the proceeding till after he was convicted.

IV.

THE SENTENCE IN THIS CASE IMPOSED A CRUEL AND UNUSUAL PUNISHMENT, AND FOR THAT REASON IT SHOULD BE SET ASIDE, EVEN IF THE CONVICTION BE NOT REVERSED.

A question of this kind arose in *O'Neill v. Vermont*, 144 U. S., 223. The majority of the court in that case refused to consider the question, because it was not assigned as error even in the brief of counsel for the plaintiff in error, and because the Eighth Amendment has always been held not to apply to the States of this Union, but to be a restriction upon the Government of the United States only. Mr. Justice Field and Mr. Justice Harlan filed dissenting opinions, in which they held that the provisions of the Eighth Amendment had been made to apply to the States by virtue of the provisions of the Fourteenth Amendment, and they both held that the judgment should be reversed, because the fine and imprisonment imposed in that case were cruel and unusual, and the court could take notice of plain error whether assigned or not. Mr. Justice Brewer concurred in the main with the opinion filed by Mr. Justice Harlan.

In the recent case of *Waters-Pierce Oil Company v. Texas*, 212 U. S., 111, this court seems to assume that a fine may be so unreasonable as to amount to taking property without due process of law, but in that case held that the court was "not prepared to say after confirmation of the verdict and judgment in the courts of the State that there was want of due process of law in the penalties imposed."

In the case of *Paraiso v. U. S.*, 207 U. S., 368, a case which it must be admitted is very much like the present case, the counsel for the plaintiff in error in their brief assigned as error, among other things, that the punishment was cruel and unusual, and the court declined to consider the question on the ground that the objection was not made in due season in the court below. In that case the point was

not made in the Supreme Court of the Philippine Islands until after the judgment of conviction had been affirmed in that court, when a motion for a rehearing was filed, which was overruled.

In the case at bar a motion for a rehearing was filed and overruled, but this point appears not to have occurred to counsel, and is now made in this court for the first time.

Adjudications on this question seem to be very few in number.

In *State v. G., H. & S. A. R. Co.*, 100 Tex., 153, 174, 175, the Supreme Court of Texas set aside a fine under the following clause of the constitution of that State:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

That case involved a proceeding against a railroad company to recover unpaid taxes and penalties.

The court said:

"The assessment of a penalty of one hundred per cent for the failure to pay a tax would seem to be sufficiently excessive to authorize a court to declare it to be excessive, but the assessment of more than four thousand per cent upon the amount detained can leave no possible question that the penalties are out of all proportion to the amount of money detained, and the law must be held to be void for the penalties."

Since this court seems to have held that even citizens of the United States temporarily in the Philippines are not entitled to the protection of the provisions of the Constitution of the United States relating to criminal proceedings, that instrument has not been referred to in this brief. But some of those provisions have been made applicable to the Philippine Islands by the act of Congress of July 1, 1902 (32 Stat., 51), and they seem to be sufficient for the present purpose.

By section 5 of that act it is provided: That in those islands no law shall be enacted which shall deprive any person of life, liberty, or property without due process of law.

That no person shall be held to answer to any criminal offense without due process of law.

That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel and to meet the witnesses face to face.

That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

It is respectfully submitted that the case should be remanded with instructions to discharge the plaintiff in error, or that the conviction should be set aside and a new trial ordered, or that the sentence should be vacated and the case sent back for a reasonable sentence.

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